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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION  
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12 KENNETH WAYNE BLAKE, ) Case No. CV 14-03344-AS  
13 Plaintiff, )  
14 v. ) MEMORANDUM OPINION AND  
15 ) ORDER OF REMAND  
16 CAROLYN W. COLVIN, Acting )  
Commissioner of Social )  
17 Security, )  
Defendant. )  
18 \_\_\_\_\_ )

19 Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY  
20 ORDERED that this matter is remanded for further administrative action  
21 consistent with this Opinion.  
22

23  
24 PROCEEDINGS  
25

26 On May 7, 2014, Plaintiff filed a Complaint seeking review of the  
27 denial of his application for Disability Insurance Benefits. (Docket  
28 Entry No. 3). The parties consented to proceed before the undersigned

1 United States Magistrate Judge. (Docket Entry Nos. 8, 10). On  
2 September 5, 2014, Defendant filed an Answer along with the  
3 Administrative Record ("AR"). (Docket Entry Nos. 13-14). On December  
4 17, 2014, the parties filed a Joint Stipulation ("Joint Stip."), setting  
5 forth their respective positions regarding Plaintiff's claims. (Docket  
6 Entry No. 19).  
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9 The Court has taken this matter under submission without oral  
10 argument. See C.D. Cal. L.R. 7-15; "Order Re: Procedures In Social  
11 Security Case," filed May 8, 2014 (Docket Entry No. 7).  
12

#### 13 14 BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION 15

16  
17 On June 7, 2011, Plaintiff, formerly employed as a security guard  
18 and as a janitor (see AR 41-44, 135) filed an application for Disability  
19 Insurance Income, alleging an inability to work since June 1, 2004 due  
20 to back and right leg pain (sciatica) and asthma. (See AR 111-14, 144).<sup>1</sup>  
21 On September 19, 2012, the Administrative Law Judge, Sally Reason  
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23 <sup>1</sup> Plaintiff was incarcerated from approximately November 2003 to  
24 December 2008. (See AR 36, 38, 144).

25 On January 14, 2009, Plaintiff apparently filed an application  
26 for Supplemental Security Income ("SSI") alleging disability due to his  
27 lumbar spinal impairment (see Joint Stip. at 4; AR 35). That  
28 application apparently was granted, and Plaintiff was awarded SSI  
benefits commencing January 14, 2009 (see Joint Stip. 4; AR 35-36, 48  
[At the administrative hearing, the ALJ stated, "[T]hey granted his SSI  
to the filing date, 1/14/09, and there is a determination that he wasn't  
eligible prior to the date last insured."]). (Neither party has provided  
the Court with a copy of the application or the grant of that  
application.)

1 ("ALJ"), heard testimony from Plaintiff and vocational expert Irma Bebe.  
2 (See AR 35-59). On October 10, 2012, the ALJ issued a decision denying  
3 Plaintiff's application. After finding that through the date last  
4 insured (June 30, 2008) Plaintiff suffered the following severe  
5 impairment -- degenerative disc disease of the lumbar spine (see AR 17-  
6 18),<sup>2</sup> the ALJ found that Plaintiff had the residual functional capacity<sup>3</sup>  
7 to perform light work<sup>4</sup> including lifting up to 20 pounds occasionally and  
8 10 pound frequently, and sitting up to 6 hours in an 8-hour workday, but  
9 was limited to standing and/or walking up to 2 hours in an 8-hour  
10 workday and to occasional kneeling, crouching and stooping. (See AR 18-  
11 20). Finding that through the date last insured Plaintiff was capable  
12 of performing his past relevant work as a security officer, the ALJ  
13 found that Plaintiff was not disabled within the meaning of the Social  
14 Security Act. (See AR 20).  
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18 Plaintiff requested that the Appeals Council review the ALJ's  
19 decision. (See AR 7-11). The request was denied on February 12, 2014.  
20 (See AR 1-5). The ALJ's decision then became the final decision of the  
21 Commissioner, allowing this Court to review the decision. See 42 U.S.C.  
22 §§ 405(g); 1383©.  
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25 <sup>2</sup> The ALJ found that asthma was not a severe impairment. (See  
AR 17).

26 <sup>3</sup> A Residual Functional Capacity is what a claimant can still  
27 do despite existing exertional and nonexertional limitations. See 20  
C.F.R. § 404.1545(a)(1).

28 <sup>4</sup> "Light work involves lifting no more than 20 pounds at a time  
with frequent lifting or carrying of objects weighing up to 10 pounds."  
20 C.F.R. §§ 404.1567(b) and 416.967(b).

1 **PLAINTIFF'S CONTENTIONS**

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3 Plaintiff alleges that the ALJ erred in: (1) determining that  
4 Plaintiff was not disabled prior to the date last insured (June 30,  
5 2008); and (2) rejecting Plaintiff's testimony regarding his symptoms  
6 and limitations prior to the date last insured (June 30, 2008). (See  
7 Joint Stip. at 3-5, 10-14, 19-20).  
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9

10 **DISCUSSION**

11  
12 After consideration of the record as a whole, the Court finds that  
13 Plaintiff's first claim of error warrants a remand for further  
14 consideration. Since the Court is remanding the matter based on  
15 Plaintiff's first claim of error, the Court will not address Plaintiff's  
16 second claim of error.  
17  
18

19 **A. The ALJ Erred in Failing to Properly Consider All of the Probative**  
20 **Medical Evidence**

21  
22 Plaintiff asserts that the ALJ erred in concluding that Plaintiff  
23 was not disabled prior to the date last insured (June 30, 2008), based  
24 on the ALJ's failure to consider probative medical evidence in the  
25 record (namely, Plaintiff's transport and treatment records at Coalinga  
26 Regional Medical Center on December 17, 2004 (see AR 218-27); and  
27 Plaintiff's Magnetic Resonance Image ("MRI") at Coalinga Regional  
28 Medical Center on April 25, 2005 (see AR 215-16)). (See Joint Stip. at

1 3-5, 10-11).<sup>5</sup> Defendant asserts that the evidence in the record  
2 supported the ALJ's determinations regarding Plaintiff's residual  
3 functional capacity and lack of disability. (See Joint Stip. at 5-9).  
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5  
6 The first set of records show that on December 17, 2004, Plaintiff  
7 complained of progressively worsening lumbar spine pain that started on  
8 his right inner thigh and traveled up his right abdomen to his lumbar  
9 spine, his pain was severe (8 out of 10) and increased with movement, he  
10 was unable to walk or stand, and his back had "tightened up." He was  
11 transported to Coalinga Regional Medical Center (see AR 218-19), where  
12 an X-ray of the lumbar spine showed "Grade 1 spondylolisthesis at the  
13 L4-5 level", "Hypolorodosis and mild scoliosis" and "Degenerative disc  
14 disease" (see AR 226), and Plaintiff was prescribed Toradol (see AR 223,  
15 225).  
16

17  
18 The second set of records show that on April 25, 2005, an MRI of  
19 Plaintiff's lumbar spine was taken at Coalinga Regional Medical Center,  
20 and revealed the following impressions: "Degenerative disc disease and  
21 degenerative joint disease"; "T12/L1 posterior disc protrusion measuring  
22 approximately 3 mm"; "L2/L3 posterior disc protrusion measuring  
23 approximately 3 mm"; "L3/L4 posterior disc protrusion measuring  
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26 <sup>5</sup> To the extent that Plaintiff is basing his claim on the ALJ's  
27 alleged failure to address the determination that Plaintiff was found to  
28 be disabled as of January 14, 2009 for purposes of Supplemental Security  
Income benefits (see Joint Stip. at 3-5, 10-11), Plaintiff has failed to  
allege how that determination is relevant to the present case. In any  
event, it appears the ALJ was aware of, and considered, Plaintiff's  
receipt of Supplemental Security Income benefits. (See AR 18, 48).

1 approximately 3 mm, possible impingement of the right L3 nerve root at  
2 the right neural canal, and possible impingement of the right L4 nerve  
3 root at the right lateral recess"; and "L4/L5 posterior disc protrusion  
4 measuring approximately 5 mm, fissure of annulus fibrosis, and  
5 impingement of the right L5 nerve root at the right lateral recess."  
6 (See AR 215-16).  
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8  
9 The two sets of records are relevant, in that they concern issues  
10 with Plaintiff's lumbar spine between June 1, 2004 (the alleged onset  
11 date of disability) and June 30, 2008 (the date last insured). Although  
12 Plaintiff's attorney at the hearing informed the ALJ about Plaintiff's  
13 back problems in 2004 and 2005 (see AR 36), and although the two sets of  
14 records were included in the administrative record, the ALJ failed to  
15 discuss or consider them. (See AR 18-19). Indeed, the ALJ's only  
16 reference to the exhibit in which these records were included (Exhibit  
17 1F) was limited to "an episode of atypical chest pain in July 2006" (AR  
18 19) and there is no indication that the ALJ reviewed or considered the  
19 other records contained within that exhibit. Id. The Court finds that  
20 the the ALJ erred in failing to consider such probative evidence. See  
21 Vincent v. Heckler, 739 F.2d 1393, 1396 (9th Cir. 1984)("[The ALJ] must  
22 explain why significant probative evidence has been rejected.")(internal  
23 quotation marks omitted).<sup>6</sup>  
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27 <sup>6</sup> The Court will not consider the Defendant's argument that the  
28 2004 and 2005 records at issue support the ALJ's findings (see Joint  
Stip. at 8), because, as discussed above, there is no indication that  
the ALJ reviewed or considered these records in making her findings.  
See Pinto v. Massanari, 249 F.3d 840, 847-48 (9th Cir. 2001); SEC v.

(continued...)

1 **B. Remand Is Warranted**

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3 The decision whether to remand for further proceedings or order an  
4 immediate award of benefits is within the district court's discretion.  
5 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no  
6 useful purpose would be served by further administrative proceedings, or  
7 where the record has been fully developed, it is appropriate to exercise  
8 this discretion to direct an immediate award of benefits. Id. at 1179  
9 ("[T]he decision of whether to remand for further proceedings turns upon  
10 the likely utility of such proceedings."). However, where, as here, the  
11 circumstances of the case suggest that further administrative review  
12 could remedy the Commissioner's errors, remand is appropriate. McLeod  
13 v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); Harman v. Apfel, supra,  
14 211 F.3d at 1179-81.  
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17  
18 Since the ALJ failed to properly consider probative evidence,  
19 remand is appropriate. Because outstanding issues must be resolved  
20 before a determination of disability can be made, and "when the record  
21 as a whole creates serious doubt as to whether the [Plaintiff] is, in  
22 fact, disabled within the meaning of Social Security Act," further  
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25 <sup>6</sup> (...continued)  
Chenery Corp., 332 US 194, 196 (1947).

26 The Court is unable to find that the ALJ's error was harmless,  
27 because it is not "clear from the record that the ALJ's error was  
28 inconsequential to the ultimate nondisability determination." See  
Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008)(quotation  
marks and internal quotation marks omitted).

administrative proceedings would serve a useful purpose and remedy defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th Cir. 2014)(citations omitted).<sup>7</sup>

**ORDER**

For the foregoing reasons, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).<sup>8</sup>

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: August 28, 2015

/s/

ALKA SAGAR

UNITED STATES MAGISTRATE JUDGE

<sup>7</sup> The Court has not reached any other issue raised by Plaintiff except insofar as to determine that reversal with a directive for the immediate payment of benefits would not be appropriate at this time. "[E]valuation of the record as a whole creates serious doubt that Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995, 1021 (2014). Accordingly, the Court declines to rule on Plaintiff's contention regarding the ALJ's failure to properly reject Plaintiff's testimony regarding his symptoms and limitations prior to the date last insured (June 30, 2008) (see Joint Stip. at 11-14, 19-20). Because this matter is being remanded for further consideration, this issue should also be considered on remand, if necessary.

<sup>8</sup> The ALJ should obtain the assistance of a medical expert to determine the onset date of disability only if necessary.